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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/684,032	10/06/2000	Christopher S. Nolan	420-002	1056

7590

10/25/2006

J. Ralph King
King and Schickli PLLC
247 North Broadway
Lexington, KY 40507

EXAMINER

FOX, CHARLES A

ART UNIT	PAPER NUMBER
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3652

DATE MAILED: 10/25/2006

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/684,032
Filing Date: October 06, 2000
Appellant(s): NOLAN, CHRISTOPHER S.

Andrew D. Dorisio
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 11, 2006 appealing from the Office action mailed on July 5, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

3,951,284	Fell et al.	4-1976
5,028,197	Krein et al.	7-1991

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5,746,862	Derby et al.	5-1998
4,516,906	Krein et al.	5-1985
3,456,834	Paton	7-1969

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,2,5 and 6 are rejected under 35 U.S.C. 102(b) as being anticipated by Fell et al. . In regards to claim 1 Fell et al. (US 3,951,284) disclose a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

In regards to claim 2 Fell et al. further disclose tubes (45,48) attached to the access openings of the liner (20).

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In regards to claims 5 and 6 Fell et al. also disclose access openings for containers having openings on one or more sides depending on the configuration of the container.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,2,5,6, 13 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. In regards to claim 1 Fell et al. (US 3,951,284) teach a moisture proof liner (20) for a shipping container comprising:

four panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the end of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the

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opening at a location in the liner corresponding to where there is an opening in the container.

In regards to claim 2 Fell et al. further teach tubes (45,48) attached to the access openings of the liner (20).

In regards to claims 5 and 6 Fell et al. also teach access openings for containers having openings on one or more sides depending on the configuration of the container.

In regards to claims 13,15 and 17 Fell et al. teach a moisture proof liner (20) for a shipping container comprising:

Four elongated panels of impervious film to match the top, bottom, and sides of the container;

two end panels to complete the liner;

an access panel in the side of the liner corresponding to the opening of the container that is adapted for loading and unloading cargo;

a closure to seal the liner to protect the cargo from moisture.

While Fell et al. do not explicitly teach the opening in the elongated side of the liner it would have been obvious to one of ordinary skill in the art, at the time of invention to place the opening at a location in the liner corresponding to where there is an opening in the container, and to not place an opening in a panel that is not adjacent to an opening in the container.

Claims 3,4,12 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al as applied to claims 1,2 and 13 as above, and further in view of Krein et al.

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In regards to claims 3 and 12 Fell et al. teach the limitations of claim 2 as above, they do not teach the liner and tubes as being a plastic sheet material joined by heat welding of the mating surfaces. Krein et al. (US 5,028,197) teach a plastic liner with joints that are fused together using heat. See column 5 lines 43-57, Krein et al. further teach using a source of air to aid in erecting the liner, said source of air comprising a plurality of orifices.

Regarding claim 4 Fell et al. further teach that the tubes (45,48) are closed with a tie (46) and tucked inside the container (30) during transport.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 1 above, and further in view of Derby. Fell et al. teach the limitations of claim 1 as above they do not teach the end panels as being folded and heat sealed. Derby US 5,746,862 teaches using a liner for a container with panels having folding gussets (22,24). It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the liner taught by Fell et al. with the gussets taught Derby in order to allow easy storage of the liner when not in use as well as making and deployment of the liner easier.

Claims 14 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claims 13 and 17 above, and further in view of Krein. Fell et al. teach the limitations of claims 13 and 17 as above, they do not teach the liner as being free standing. Krein US 4516,906 teaches a liner (16) for a container (10) wherein the liner is free standing when installed. It would have been obvious to one of ordinary skill in the art, at the time of invention to modify the liner taught by Fell et

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al. to be free standing as taught by Krein '906 in order to decrease the complexity and time involved for installing the liner thereby making the liner easier to use.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Fell et al. as applied to claim 13 above, and further in view of Paton. Fell et al. teaches the limitations of claim 13 as above, they further teach placing the openings of the liner at the same location as the openings in a container the liner is to be installed into. While Fell et al. does not explicitly show a liner with solid ends they suggest one. Paton US 3,456,834 teaches a liner for a rail car wherein it has openings designed to correspond with openings in the container, and as such does not have openings at either of its ends. It would have been obvious to one of ordinary skill in the art, at the time of invention to provide the Fell et al. liner with unopened ends as taught by Paton if it were to be used in a container without open ends as both Fell et al. and Paton teach placing the openings to the liner at openings in the container.

(10) Response to Argument

Regarding the arguments against the 35 U.S.C. 102(b) rejections of claims 1,2,5 and 6 by the Fell et al. reference, the appellant is incorrect. The point in question is the placement of the liner opening which as claimed is in the side of the liner. While the Fell et al. reference only uses figures that show a conventional trailer with a liner opening, the reference also discloses placing the liner at a location that aligns with the container door (see column 2 lines 9-40). While the above passage does not explicitly disclose a side loading container it does explicitly disclose placing the opening in the liner adjacent to the door opening of the container. Further at column 8 lines 28-39 Fell et al. also

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disclose the types of containers the liner can be used with, one of which is a rail freight car. As rail freight cars do not have door openings in their ends and usually have openings along their mid point the examiner contends that it is inherent in the Fell et al. reference that the liner can be used with containers with openings along any portion of the container that has a door opening, and that the Fell et al. reference does limit its application to only trailers with rear opening doors. As such the limitations of claims 1,2,5 and 6 are anticipated by the Fell et al. reference.

Regarding the arguments that claims 1,2,5,6,13,and 17 are not obvious in light of Fell et al. reference the appellant is directed to the above arguments submitted by the examiner. While the examiner believes the claims are anticipated the 35 U.S.C. 103(a) rejections were set forth based on the section of the Fell et al. reference where they teach placing the opening of the liner adjacent to the door of the container the liner is being placed into (see column 2 lines 9-40). Also the examiner did not take official notice in regards to placing the opening of the liner adjacent to the opening of the container, but rather followed the teachings of the Fell et al. reference. As such the claims are believed to be at a minimum obvious variants taught by the Fell et al. reference. Regarding the hindsight argument found on page 12 the examiner also points out that Fell et al. teach using their liner in a rail car which by convention has side openings roughly in the middle of a side wall. A prior art search by the examiner has not found any rail cars that have openings on the front or rear walls for loading and unloading cargo, as such one of ordinary skill in the art would have known about

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containers with side openings and modified the liner to have openings matching the container as taught by Fell et al.

Regarding changing the operation of the Fell et al. patent it is noted that they teach using the liner with a variety of container types and that rail cars are explicitly mentioned as a use for the liner. As such the use of the liner in a vehicle that is conventionally loaded from a side is taught by Fell et al. as being within the operational abilities of their device. As Fell et al. teaches a variety of containers for using their liner with, they envisioned that it could be used with a container with openings at a variety of different locations. That is why they teach placing the openings in the liner near the opening in the container, while this may alter the physical look of the liner, it does not make for a structural redesign, as the structure of the openings is the same no matter what wall it is placed in. When taken together the Fell et al. teachings teach placing the opening of the liner at a location adjacent to an opening in a container and also using the liner with a rail car which conventionally has door openings along a side wall at substantially the midpoint of the wall. Therefore Fell et al. provides all the teachings a skilled artisan would need to envision a liner with a side opening.

Regarding the rejections of Claims 3,4,12 and 16 by Fell et al. in view of Krein et al. '197 the examiner concedes that a typographical error was made. The rejection regarding claims 3 and 12 also clearly identifies subject matter in the Krein et al. '197 reference relevant to claim 16, the examiner did not place the claim number in the subheading. Regarding the actual rejections of claims 3,4,12 and 16 it is noted that Fell et al. teach the structure of the claims, but not how the various parts are joined together.

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The Krein et al. '197 reference is used as a teaching that heat welding of this type of liner is well known in the art. As such the rejections are well founded as each limitation of claims 3,12 and 16 are taught by either Fell et al. or Krein et al. and both references deal with solving the same problem.

Regarding the rejections of claims 7 and 8 the examiner notes that the Derby reference teaches a liner with gussets that are formed along with other joints in the liner by heat sealing. While they do not teach the gussets at the exact placement as the instant application one of ordinary skill in the art would have easily understood the steps needed to place these gussets along any panel in the liner.

Regarding the rejections of claims 14 and 18 over the Fell et al. and Krein et al. '906 patents, the appellant has present confusing arguments. On page 21 of the appeals brief the appellant argues that the '906 patent does not require an elaborate connector system at lines 2 and 3, but at lines 10 and 11 teaches that the '906 system uses an elaborate connection system. The examiner is treating the arguments as if the '906 system does not require an elaborate connection system. While the '906 patent does cite deficiencies with the Fell et al. patent, they also teach structure that when applied to the Fell et al. patent constitute an improvement to that liner. As such the '906 patent teaches the same improvement to a liner as is claimed in claims 14 and 18. It is also noted that the appellants liner is held in place by elements (19) when being erected, in the same manner that the '906 reference is held by elements (24) when being erected. As such the '906 patent meets the limitations of being free standing as defined by the appellant. Therefore the combination is valid even though one

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"disparages" the other as the modifying reference is used to cure the "disparaged" deficiencies of the other.

Regarding the combination of Fell et al. and Paton in the rejection of claim 15 the examiner notes that Fell et al. teach using their liner in a rail car and that Paton teaches a similar liner in a rail car. As such the structural design of the liner for use within a rail car is suggested by the Fell et al. reference and explicitly taught by the Paton reference. Therefore the combination is deemed valid by the examiner.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Charles A. Fox *CA Fox 10/24/06*

Conferees:

Eileen D. Lillis

James Keenan


